



## Courts and Dept of Justice Agree: Videotaping Police is OK

Ken Paulsen (left), president and CEO of the First Amendment Center, wrote in USA Today that “just as police officers use technology to watch citizens, including patrol car cameras, traffic light cameras and radar to track speeding, the public [also] has a right to monitor the work of officers on the public payroll.”



Perhaps the most memorable and life-altering event in the history of citizens recording police behavior was that moment on the evening of March 3, 1991, when George Halliday, using his Sony video recorder, [taped the beating of Rodney King](#) in Los Angeles. By the time the dust had settled, two of the four officers charged in the beating were found guilty, 53 people were dead, 2,383 people were injured, more than 7,000 fires had been set, 3,100 business establishments had been damaged or destroyed, \$1 billion in losses had been sustained, and police behavior [was permanently altered](#).

As Joel Rubin noted in his article commemorating the 20th anniversary of the Rodney King incident in the *Los Angeles Times*,

Things are far different and the tape that so tainted the LAPD has [left] a clear legacy in how officers think about their jobs.

Police now work in a YouTube world in which cellphones double as cameras, news helicopters transmit close-up footage of unfolding police pursuits, and surveillance cameras capture arrests or shootings. Police officials are increasingly recording their officers. Compared to the cops who beat King, officers these days hit the streets with a new reality ingrained in their minds: Someone is always watching.

As new recruits are brought into the LAPD fold they are warned that no matter where they are, on duty or off, they are on camera. As Sgt. Heather Fungaroli so inelegantly put it: “I don’t care if you’re in a bathroom taking care of your personal business...whatever you do, assume it will be caught on video.”

It wasn’t until Simon Glik videotaped a violent police arrest of an alleged drug offender on the Boston Common in October of 2007, however, that courts began to make clear that such recordings are legal and proper and protected by the Bill of Rights.

Glik was walking by the Boston Common on the evening of October 1 when he saw three police officers attempting to arrest a young man using what he thought was excessive force. When Glik heard another



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bystander yell at the police: "You're hurting him! Stop!" he opened his cell phone and began recording the event. After the suspect had been subdued and placed in the back of a police cruiser, one of the officers turned to Glik and said, "I think you have taken enough pictures." To which Glik replied, "I am recording this. I saw you punch him." The officer then arrested Glik, put him in handcuffs, and charged him with violating Massachusetts' wiretap law, disturbing the peace, and aiding in the escape of a prisoner.

When Glik filed an internal affairs complaint with the police department, nothing came of it. In February 2010 Glik, with the help of David Milton, an ACLU lawyer, filed a civil rights action in the U.S. District Court for the District of Massachusetts, claiming that his rights under the First and Fourth Amendment had been violated.

When the three officers named in the action tried to have it quashed, the judge ruled that Glik's "First Amendment right publicly to record the activities of police officers on public business is established," and threw out the officers' demand.

The case then moved forward and was decided in favor of Glik on August 16, 2011. The court's 24-page decision stated:

Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting "the free discussion of governmental affairs." This is particularly true of law enforcement officials who are granted substantial discretion that may be misused to deprive individuals of their liberties...

We conclude, based on the facts alleged, that Glik was exercising clearly-established First Amendment rights in filming the officers in a public space, and that his clearly-established Fourth Amendment rights were violated by his arrest without probable cause.

The local ACLU was delighted with the ruling. Sarah Wunsch, a staff attorney with the ACLU of Massachusetts, said the decision "will be influential around the country in other cases where people have been arrested for videotaping the conduct of the police."

Wunsch was right. Christopher Sharp had been enjoying a day at the races at Pimlico Race Course on May 15, 2010, when Baltimore police officers forcibly arrested his friend. Sharp used his cell phone to record the incident following which the officers demanded that he surrender it to them. After initially refusing, he gave it up. When it was returned later Sharp discovered that all video of the incident had been erased and in fact his cell phone had been rendered essentially useless, so that it was only able to make emergency calls.

Sharp filed suit against the Baltimore Police Department contending, as Glik did, that his rights under the First and Fourth Amendment had been violated.

But something unexpected and remarkable happened: The U.S. Department of Justice filed a "[statement of interest](#)" in Sharp's case:

This litigation presents constitutional questions of great moment in this digital age: whether private citizens have a First Amendment right to record police officers in the public discharge of their duties, and whether officers violate citizens' Fourth and Fourteenth Amendment rights when they seize and destroy such recordings without a warrant or due process. The United States urges this Court to answer both of those questions in the affirmative. The right to record police officers while performing duties in a public place, as well as the right to be protected from the



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warrantless seizure and destruction of those recordings, are not only required by the Constitution. They are consistent with our fundamental notions of liberty, promote the accountability of our governmental officers, and instill public confidence in the police officers who serve us daily.

With the successful conclusion of Glik's lawsuit and the anticipated similar result in Sharp's comes the comfort that, for the moment at least, rights granted by God and guaranteed under the Bill of Rights in the First and Fourth Amendments are secure. Constitutionalsists encourage citizens to keep their cell phones fully charged and their determination fixed when faced with government officials' errant behavior.



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